

196967

STATE OF SOUTH CAROLINA

(Caption of Case)

Happy Rabbit, LP on behalf of Windridge
Townhomes,

Complainant,

v.

Alpine Utilities, Inc.,
Defendant.

COPY

Posted: 1/22/09

Re: SA

Date: 1/22/09

Time: 3:40

BEFORE THE
PUBLIC SERVICE COMMISSION
OF SOUTH CAROLINA

COVER SHEET

DOCKET
NUMBER: 2008 - 360 - S

(Please type or print)

Submitted by: Benjamin P. Mustian, Esquire

SC Bar Number: 68269

Address: Post Office Box 8416

Telephone: 252-3300

Columbia, SC 29202

Fax: 771-2410

Other:

Email: bmustian@willoughbyhoefer.com

NOTE: The cover sheet and information contained herein neither replaces nor supplements the filing and service of pleadings or other papers as required by law. This form is required for use by the Public Service Commission of South Carolina for the purpose of docketing and must be filled out completely.

DOCKETING INFORMATION (Check all that apply)

☐ Emergency Relief demanded in petition

☒ Request for item to be placed on Commission's Agenda
expeditiously

☐ Other:

INDUSTRY (Check one)	NATURE OF ACTION (Check all that apply)		
<input type="checkbox"/> Electric	<input type="checkbox"/> Affidavit	<input type="checkbox"/> Letter	<input type="checkbox"/> Request
<input type="checkbox"/> Electric/Gas	<input type="checkbox"/> Agreement	<input type="checkbox"/> Memorandum	<input type="checkbox"/> Request for Certification
<input type="checkbox"/> Electric/Telecommunications	<input type="checkbox"/> Answer	<input checked="" type="checkbox"/> Motion	<input type="checkbox"/> Request for Investigation
<input type="checkbox"/> Electric/Water	<input type="checkbox"/> Appellate Review	<input type="checkbox"/> Objection	<input type="checkbox"/> Resale Agreement
<input type="checkbox"/> Electric/Water/Telecom.	<input type="checkbox"/> Application	<input type="checkbox"/> Petition	<input type="checkbox"/> Resale Amendment
<input type="checkbox"/> Electric/Water/Sewer	<input type="checkbox"/> Brief	<input type="checkbox"/> Petition for Reconsideration	<input type="checkbox"/> Reservation Letter
<input type="checkbox"/> Gas	<input type="checkbox"/> Certificate	<input type="checkbox"/> Petition for Rulemaking	<input type="checkbox"/> Response
<input type="checkbox"/> Railroad	<input type="checkbox"/> Comments	<input type="checkbox"/> Petition for Rule to Show Cause	<input type="checkbox"/> Response to Discovery
<input checked="" type="checkbox"/> Sewer	<input type="checkbox"/> Complaint	<input type="checkbox"/> Petition to Intervene	<input type="checkbox"/> Return to Petition
<input type="checkbox"/> Telecommunications	<input type="checkbox"/> Consent Order	<input type="checkbox"/> Petition to Intervene Out of Time	<input type="checkbox"/> Stipulation
<input type="checkbox"/> Transportation	<input type="checkbox"/> Discovery	<input type="checkbox"/> Prefiled Testimony	<input type="checkbox"/> Subpoena
<input type="checkbox"/> Water	<input checked="" type="checkbox"/> Exhibit	<input type="checkbox"/> Promotion	<input type="checkbox"/> Tariff
<input type="checkbox"/> Water/Sewer	<input type="checkbox"/> Expedited Consideration	<input type="checkbox"/> Proposed Order	<input type="checkbox"/> Other:
<input type="checkbox"/> Administrative Matter	<input type="checkbox"/> Interconnection Agreement	<input type="checkbox"/> Protest	
<input type="checkbox"/> Other:	<input type="checkbox"/> Interconnection Amendment	<input type="checkbox"/> Publisher's Affidavit	
	<input type="checkbox"/> Late-Filed Exhibit	<input type="checkbox"/> Report	

RECEIVED

JAN 22 2009

PSCS
DOCKETING

Print Form

Reset Form

WILLOUGHBY & HOEFER, P.A.

ATTORNEYS & COUNSELORS AT LAW

930 RICHLAND STREET

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BENJAMIN P. MUSTIAN
MICHAEL R. BURCHSTEAD
ANDREW J. MACLEOD

AREA CODE 803
TELEPHONE 252-3300
TELECOPIER 256-8062

TRACEY C. GREEN
SPECIAL COUNSEL

RECEIVED
2009 JAN 22 AM 11:41
SC PUBLIC SERVICE
COMMISSION

*ALSO ADMITTED IN TX

January 22, 2009

VIA HAND-DELIVERY

The Honorable Charles L.A. Terreni

Chief Clerk/Administrator

Public Service Commission of South Carolina

101 Executive Center Drive

Columbia, South Carolina 29210

RE: Happy Rabbit, LP on behalf of Windridge Townhomes v. Alpine Utilities, Inc.;
Docket No. 2008-360-S

Dear Mr. Terreni:

Enclosed for filing on behalf of Alpine Utilities, Inc. are the original and one (1) copy of the Motion for Order Compelling Responses to Discovery Requests or, in the Alternative, to Dismiss Complaint in the above-referenced matter. By copy of this letter, I am serving a copy of these documents upon the parties of record and enclose a Certificate of Service to that effect.

I would appreciate your acknowledging receipt of these documents by date-stamping the extra copies that are enclosed and returning the same to me via our courier.

If you have any questions, or if you need any additional information, please do not hesitate to contact me.

Sincerely,

WILLOUGHBY & HOEFER, P.A.



Benjamin P. Mustian

BPM/cf
Enclosures

The Honorable Charles L.A. Terreni

January 22, 2009

Page 2

cc: Nanette S. Edwards, Esquire
Richard L. Whitt, Esquire

BEFORE
THE PUBLIC SERVICE COMMISSION OF
SOUTH CAROLINA
DOCKET NO. 2008-360-S

RECEIVED
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SC PUBLIC SERVICE
COMMISSION

IN RE:)
)
Happy Rabbit, LP on behalf of Windridge)
Townhomes,)
)
Complainant)
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v.)
)
Alpine Utilities, Inc.,)
)
Defendant.)
)
_____)

**MOTION FOR ORDER COMPELLING
RESPONSES TO DISCOVERY
REQUESTS OR, IN THE
ALTERNATIVE, TO DISMISS
COMPLAINT**

Pursuant to 26 S.C. Code Ann. Regs. R. 103-835 (Supp. 2008) and Rule 37(a), South Carolina Rules of Civil Procedure, Defendant Alpine Utilities, Inc. ("Alpine") herein moves the Public Service Commission of South Carolina ("Commission") for expedited consideration of its request for an Order compelling Complainant Happy Rabbit, L.P. ("Happy Rabbit") to respond to certain discovery requests filed by Alpine in this matter. Furthermore, pursuant to Rule 37(a)(4), SCRCF, Alpine herein moves for an Order requiring Complainant to pay Defendant the amount of reasonable expenses incurred in obtaining this Order, including reasonable attorney's fees. In the event that no responses are forthcoming from the Complainant, Defendant further moves for an Order dismissing the Complaint with prejudice. In support of said Response and Motion, Alpine would respectfully show as follows:

1. On December 19, 2008, Alpine submitted its First Set of Interrogatories and First Set of Requests for Production (collectively referred to herein as “Discovery”) on Happy Rabbit by serving a copy of same via hand-delivery on Mr. Richard L. Whitt, Esquire, attorney for the Complainant. See Certificate of Service of Andrew Dorsey attached hereto as Exhibit A. A copy of the Discovery was simultaneously filed with the Commission pursuant to 26 S.C. Code Ann. 103-833(B) and (C) (Supp. 2008).

2. Therein, and in accordance with 26 S.C. Code Ann. 103-833(B) and (C) (Supp. 2008), Alpine specified that all responses to the Discovery be provided within twenty (20) days. Therefore, Happy Rabbit’s responses to the Discovery were due to Alpine no later than January 8, 2009.

3. As of the date of this filing, fourteen (14) days after the required response date, Alpine has not received any response to its Discovery.¹ See Affidavit of Benjamin P. Mustian, Esquire attached hereto as Exhibit B.

4. Happy Rabbit has not filed a written objection regarding the Discovery with the Commission or with Alpine and, similarly, the Complainant has not requested an extension of time.

5. Counsel for Alpine has unsuccessfully attempted to contact counsel for Happy Rabbit on several occasions to discuss this matter.

6. Alpine has a substantial right and need to obtain the documents and information sought, and in order to properly investigate the issues purported to be presented in this matter, must be afforded the benefits of discovery. Otherwise, Alpine would be denied its right to administrative due process.

¹ Curiously, Happy Rabbit did submit responses to Alpine’s Requests to Admit which were served simultaneously with Alpine’s Interrogatories or Requests for Production.

7. Given the current dates for prefilings of testimony and the hearing scheduled in this matter, Alpine asserts that responses to its Discovery requests must be **received** by Alpine no later than February 2, 2009 so that Alpine may be able to properly prepare its defense of this matter and develop its direct testimony which is due on February 10, 2009.

8. As set forth in its Answers to Alpine's Requests to Admit filed with the Commission on January 16, 2009, Happy Rabbit admits that it is a customer of Alpine and that its tenants have not established any customer relationship with Alpine. Nevertheless, Happy Rabbit has been withholding and continues to withhold payment for sewer services rendered by Alpine to Windridge Townhomes. To date, the past due amount owed by Happy Rabbit has grown to \$4,314.49. Pursuant to 26 S.C. Code Regs. 103-538.B, Alpine is required to continue to provide sewer service while this matter is pending despite Happy Rabbit's failure to remit payment for this significant and ever-growing balance. In addition to its due process rights to receive responses to its Discovery, the ongoing nature of this increasing financial burden demonstrates Alpine's compelling need to receive the requested information on an expedited basis and without further delay so that this matter may be promptly resolved.

9. Should Happy Rabbit be unwilling to comply with this deadline, Alpine would respectfully assert that this matter should be dismissed with prejudice for Complainant's failure to comply with the Commission rules and procedures and for failure to give proper consideration of Alpine's need and right to discovery.

WHEREFORE, Alpine respectfully requests that the Commission consider this matter on an expedited basis and issue an Order compelling Complainant Happy Rabbit, L.P. to provide responses to the Discovery served by Alpine Utilities, Inc. such that the responses are received by Alpine no

later than February 2, 2009, requiring Complainant to pay Defendant the amount of reasonable expenses incurred in obtaining this Order, including reasonable attorney's fees, and, in the event such responses are not forthcoming, to issue an Order dismissing this matter with prejudice.



John M.S. Hoefer
Benjamin P. Mustian
WILLOUGHBY & HOEFER, P.A.
Post Office Box 8416
Columbia, South Carolina 29202-8416
803-252-3300
Attorneys for Defendant

Columbia, South Carolina
This 22nd day of January, 2009

BEFORE
THE PUBLIC SERVICE COMMISSION OF
SOUTH CAROLINA
DOCKET NO. 2008-360-S

RECEIVED
2008 JAN 22 AM 11:42
SC PUBLIC SERVICE
COMMISSION

Happy Rabbit, LP on behalf of Windridge,)
Townhomes,)

Complainant)

v.)

Alpine Utilities, Inc.,)

Defendant.)

CERTIFICATE OF SERVICE

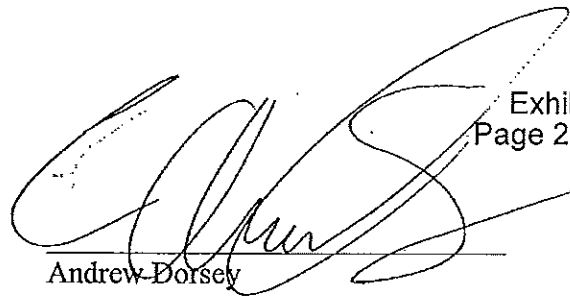
This is to certify that I have caused to be served this day one (1) copy of **Defendant's First Set of Interrogatories to Complainant, Defendant's First Request for Production to Complainant and Defendant's First Set of Requests for Admission to Complainant** via hand delivery to the address below:

Richard L. Whitt, Esquire
Austin & Rogers, P.A.
508 Hampton Street, Suite 300
Columbia, SC 29211

I further certify that I have caused to be served one (1) copy of the above-referenced documents by placing same in the care and custody of the United States Postal Service with first class postage affixed thereto and addressed as follows:

Nanette S. Edwards, Esquire
Office of Regulatory Staff
Post Office Box 11263
Columbia, South Carolina 29211

Exhibit A
Page 2 of 2



Andrew Dorsey

Columbia, South Carolina
This 19th day of December, 2008.

BEFORE

THE PUBLIC SERVICE COMMISSION OF

SOUTH CAROLINA

DOCKET NO. 2008-360-S

RECEIVED
2009 JAN 22 AM 11:43
SC PUBLIC SERVICE
COMMISSION

IN RE:)
)
Happy Rabbit, LP on behalf of Windridge)
Townhomes,)
)
Complainant)
)
v.)
)
Alpine Utilities, Inc.,)
)
Defendant.)
_____)

**AFFIDAVIT OF
BENJAMIN P. MUSTIAN**

PERSONALLY APPEARED BEFORE ME, the undersigned, Benjamin P. Mustian, who after being duly sworn, deposes and says:

1. My name is Benjamin P. Mustian and I am a member of the South Carolina Bar and an attorney with the law firm of Willoughby & Hoefer, P.A. ("Willoughby & Hoefer"). I am competent to make this affidavit. The facts stated in this affidavit are within my personal knowledge and are true and correct.

2. Willoughby & Hoefer currently represents Defendant Alpine Utilities, Inc. ("Defendant Alpine") in the above-captioned matter.

3. On December 19, 2008, I caused to be served upon counsel for Complainant Happy Rabbit, L.P. ("Complainant Happy Rabbit") Defendant Alpine's First Set of Interrogatories and Requests for Production (collectively referred to herein as "Discovery"). Service was accomplished

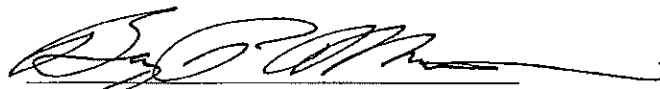
via hand-delivery and copies of the Interrogatories and Requests for Production were simultaneously filed with the Public Service Commission of South Carolina.

4. Complainant Happy Rabbit has not submitted responses to Defendant Alpine's Discovery requests and its responses are substantially overdue.

5. I have made several attempts to contact counsel for Complainant Happy Rabbit to discuss this matter, but have not received any response.

6. Defendant Alpine has a substantial need and right to all information requested of Complainant Happy Rabbit to properly prepare the case.


FURTHER AFFIANT SAYETH NOT.



Benjamin P. Mustian

SWORN TO AND SUBSCRIBED BEFORE ME

This 22nd day of January, 2009



Cathy D. Caldwell
Notary Public for South Carolina
My Commission Expires: 1/28/2015

**BEFORE
THE PUBLIC SERVICE COMMISSION OF
SOUTH CAROLINA
DOCKET NO. 2008-360-S**

Happy Rabbit, LP on behalf of Windridge,)
Townhomes,)
Complainant)
v.)
Alpine Utilities, Inc.,)
Defendant.)

CERTIFICATE OF SERVICE

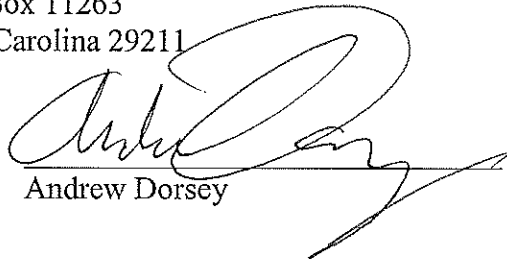
RECEIVED
2009 JAN 22 AM 11:41
SC PUBLIC SERVICE
COMMISSION

This is to certify that I have caused to be served this day one (1) copy of **Defendant's Motion for Order Compelling Responses to Discovery Requests** via hand delivery to the address below:

Richard L. Whitt, Esquire
Austin & Rogers, P.A.
508 Hampton Street, Suite 300
Columbia, SC 29211

I further certify that I have caused to be served one (1) copy of the above-referenced documents by placing same in the care and custody of the United States Postal Service with first class postage affixed thereto and addressed as follows:

Nanette S. Edwards, Esquire
Office of Regulatory Staff
Post Office Box 11263
Columbia, South Carolina 29211


Andrew Dorsey

Columbia, South Carolina
This 22nd day of January, 2009.